

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

MICHAEL A. CLARK,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 4:04CV1364 HEA
	)	(FRB)
DON ROPER,	)	
	)	
Respondent.	)	

**REPORT AND RECOMMENDATION**  
**OF UNITED STATES MAGISTRATE JUDGE**

This matter is before the Court on Missouri state prisoner Michael A. Clark's pro se petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. All pretrial matters were referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b) for appropriate disposition.

Presently pending before the Court is petitioner's Motion for Judgment by Default and On the Pleadings (filed September 26, 2005/Docket No. 38). In his motion, petitioner complains that respondent has failed to timely respond to the Court's order to show cause why the claims raised in petitioner's petition for writ of habeas corpus should not be granted. A review of the record belies petitioner's assertion. In an Opinion, Memorandum and Order entered July 25, 2005, the Honorable Henry E. Autrey ordered respondent to show cause why, procedurally or substantively, the claims raised petitioner's petition should not be granted. Under the terms of the Order, respondent was to show such cause not later

than August 24, 2005. After having sought additional time, respondent was ultimately granted to and including September 19, 2005, by which to so respond. (See Order, filed Sept. 9, 2005/ Docket No. 31.) On September 19, 2005, respondent filed his "Response to Court Order" (Docket No. 32) in compliance with the Court's previous orders.

Inasmuch as a review of the record shows respondent to have timely responded to the Court's order to show cause, petitioner's request for default judgment for respondent's alleged untimely response is without merit.

Accordingly,

**IT IS HEREBY RECOMMENDED** that petitioner Michael A. Clark's Motion for Judgment by Default and On the Pleadings (Docket No. 38) be denied.

The parties are advised that they have eleven (11) days in which to file written objections to this Report and Recommendation. Failure to timely file objections may result in waiver of the right to appeal questions of fact. Thompson v. Nix, 897 F.2d 356, 357 (8th Cir. 1990).

  
UNITED STATES MAGISTRATE JUDGE

Dated this 31st day of October, 2005.